

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JAN - 3 2006
DAVID J. MALAND, CLERK
BY
DEPUTY _____

ALLEN STEVEN WYNN

§

V.

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J.C. PENNEY CORPORATION, INC.

§

CASE NO. 4:05CV238
(Judge Schell/Judge Bush)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

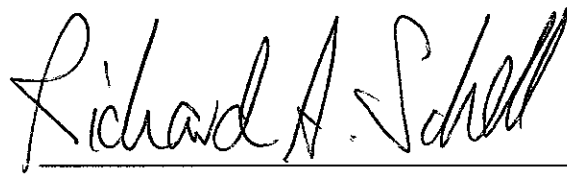
Came on for consideration the Report of the United States Magistrate Judge in this action, this matter having been heretofore referred to United States Magistrate Judge Don D. Bush pursuant to 28 U.S.C. § 636. On December 5, 2005, the Magistrate Judge entered a Report and Recommendation containing his proposed findings of fact and recommendation that Defendant's Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6) be granted and that Plaintiff's ERISA § 510 claim be dismissed with prejudice. The Magistrate Judge further recommended that Plaintiff be granted leave to amend his complaint to include a claim under ERISA § 404.

After considering the report of the United States Magistrate Judge and making a *de novo* review of the objections raised by Defendant thereto, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of Defendant are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court. It is, therefore,

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6) is **GRANTED** and that Plaintiff's ERISA § 510 claim is **DISMISSED** with prejudice. It is further

ORDERED that Plaintiff may amend his complaint to include a claim under ERISA § 404.

Signed this 28th day of December, 2005.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a large, stylized "R" and "S".

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE